

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>8th District Court of Minnesota</u>	
Name of Movant <u>Mario Ferbo Mancini</u>		Prisoner No. <u>11007-041</u>	Case No. <u>03-108-DWF-SRN</u>
Place of Confinement <u>Federal Correctional Institution Elkton</u> <u>P.O. Box 10 Lisbon, OH 44432</u>			

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BY MAIL

UNITED STATES OF AMERICA
V. Mario Ferbo Mancini
(name under which convicted)

MOTION

JAN 03 2012

1. Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT
United States Courthouse Burger Federal Building
Robert Street ST. Paul, MN. 55101
2. Date of judgment of conviction January 20th, 2003
3. Length of sentence 235 Months
4. Nature of offense involved (all counts) 18 U.S.C. § 2251(a)

5. What was your plea? (Check one)

☐ (a) Not guilty
☒ (b) Guilty
☐ (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

There was two counts of sexual exploitation of a child 18 U.S.C. § 2251(a) But one count was dropped via plea agreement.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

☐ (a) Jury
☒ (b) Judge only
7. Did you testify at the trial?
 Yes ☐ No ☒
8. Did you appeal from the judgment of conviction?
 Yes ☒ No ☐

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U.S. DISTRICT COURT ST. PAUL

(2)

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9. If you did appeal, answer the following:

(a) Name of court 8th Circuit Court of Appeals St. Louis Missouri(b) Result Denied(c) Date of result 8/09/2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court 8th District Court 316 N. Robert St. ST. Paul MN.

(2) Nature of proceeding

Amendment of Sentence based on Supreme Courts decision in Blakley v. Washington

(3) Grounds raised

Sentencing error

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied(6) Date of result 02-22-2005

(b) As to any second petition, application or motion give the same information:

(1) Name of court District and the Appeals Court for the 8th District

(2) Name of proceeding

Request for Court Transcripts and Court Records

(3) Grounds raised

Just a request

(3)

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied(6) Date of result 4-25-2011

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☒ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Whether the one year Statute of Limitations should be tolled, Based on Equitable tolling and Equitable Estoppel

Supporting FACTS (state *briefly* without citing cases or law):

Mr. Mancini was in State custody during the time given to file a timely 2255 and did not have access to Federal law to properly file his section 2255.

B. Ground two: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law):

Counsel allowed Mr. Mancini to be sentenced with errors in the P.S.I. That resulted in improper application of the Federal Sentencing Guidelines.

C. Ground three: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law):

Counsel failed to Properly object to the Application of Section 4B1.5 (§2251(d))

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- D. Ground four: The District Court Errored in Applying The Federal Sentencing Guidelines to Mr. Mancini

Supporting FACTS (state *briefly* without citing cases or law):

Due to the errors in the P.S.I. and Counsel's Ineffectiveness The District Court has improper information at the time of Sentencing of which resulted in an above the Guideline Sentence, as well as a court error.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: Mr. Mancini did not and was not aware the Errors existed in his P.S.I. Until recently. The newly discovered errors are the bases for these grounds now being raised.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

Tom Shiah 247 3rd Ave. S. Mpls. MN.

(b) At arraignment and plea

Same

(c) At trial

Same

(d) At sentencing

Same

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(e) On appeal Same

(f) In any post-conviction proceeding Pro-se

(g) On appeal from any adverse ruling in a post-conviction proceeding Pro-se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒


(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

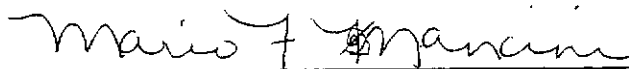
Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12-09-2011

Date



Signature of Movant